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12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

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15 In re:

16 SHIEKH SHOES LLC, a California limited
liability company,

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18 Debtor.
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Case No. 2:17-bk-24626-VZ

Chapter 11

**RESPONSE AND RESERVATION OF
RIGHTS OF COMVEST CAPITAL II, L.P.
TO THE DEBTOR'S EMERGENCY
MOTION FOR INTERIM AND FINAL
ORDERS: (1) AUTHORIZING DEBTOR
TO OBTAIN SHORT-TERM VENDOR
FINANCING FROM NIKE USA, INC.,
SECURED BY SENIOR LIEN UNDER 11
U.S.C. § 364; (2) AUTHORIZING USE OF
CASH COLLATERAL UNDER 11 U.S.C. §
363; (3) SCHEDULING FINAL HEARING
ON MOTION; AND (4) GRANTING
RELATED RELIEF**

Date: January 30, 2018
Time: 2:00 p.m.
Place: Courtroom 1368
255 E. Temple St.
Los Angeles, CA 90012

1 Comvest Capital II, L.P. ("Comvest"), as administrative agent and collateral agent for
2 itself and certain other lenders (the "Lenders"), by its undersigned counsel, hereby files this
3 Response and Reservation of Rights (the "Response") to the *Debtor's Emergency Motion for*
4 *Interim and Final Orders: (1) Authorizing Debtor to Obtain Short-Term Vendor Financing from*
5 *Nike USA, Inc., Secured by Senior Lien Under 11 U.S.C. § 364; (2) Authorizing the Use of Cash*
6 *Collateral Under 11 U.S.C. § 363; (3) Scheduling Final Hearing on Motion; and (4) Granting*
7 *Related Relief* (the "Vendor Financing Motion," D.I. 369). In support thereof, Comvest states as
8 follows:

9 Comvest files this Response to the Vendor Financing Motion to address several issues.
10 First, the Vendor Financing Motion states that the Debtor and Comvest reached an agreement in
11 principal on or about January 24, 2018. Vendor Financing Motion, ¶ 20. Although Comvest and
12 the Debtor are negotiating a potential settlement of their disputes, they have not reached an
13 agreement in principal or a final agreement.

14 Second, the Debtor provided a complete financial model to Comvest that incorporates the
15 proposed financing by Nike the day prior to the hearing day on the Vendor Financing Motion.
16 Comvest has engaged a financial advisor to assist in reviewing the financial model and the
17 potential impact the terms of the Nike financing might have on the Debtor's estate and Comvest's
18 collateral position. That analysis, however, is not complete, but Comvest remains concerned that
19 in the meantime its interests as a secured creditor are not being adequately protected. *See*
20 *Objection of Comvest Capital II, L.P. to the Debtor's Motion for Interim and Final Orders: (1)*
21 *Authorizing Debtor to Obtain Post-Petition Replacement Term Loan Secured by Senior Lien*
22 *Pursuant to 11 U.S.C. § 364 to Payoff State Bank and Trust Company; (2) Authorizing the*
23 *Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (3) Granting Adequate Protection*
24 *to Prepetition Junior Secured Creditor Pursuant to §§ 363, 362, 362, and 364; (4) Scheduling*
25 *Final Hearing on Motion; and (5) Granting Related Relief* (the "Objection", D.I. 300). Thus,
26 Comvest objects to the proposed priming of its liens under the Vendor Financing Motion and the
27 use of its cash collateral. *See* Vendor Financing Motion, ¶ 14. As expressed previously in the
28 Objection and incorporated herein by reference, Comvest objects to the priming of its liens

1 because the Debtor has not provided adequate protection, in the form of real value, to Comvest,
2 nor has the Debtor demonstrated that Comvest is adequately protected given the continued
3 operational losses of the Debtor and the deterioration in Comvest's collateral position. *See*
4 Objection, at 4. Once Comvest's financial advisor has had an opportunity to review the financial
5 model and the impact the terms of the Nike financing will have on Comvest's collateral position,
6 Comvest may file a motion seeking additional adequate protection.

7 Finally, as noted in the Objection, if and to the extent the adequate protection afforded to
8 Comvest in the form of replacement liens fails to adequately protect Comvest, and as a result,
9 Comvest is not paid in full, Comvest has not agreed to subordinate its claim under § 507(b) of the
10 Bankruptcy Code in favor of any administrative claims in this case, and Comvest does not
11 consent to any carve-out in favor of any professionals in this case or to the subordination of its
12 administrative priority claim under § 507(b) to such carve-out. *See id.*

13 Comvest hereby reserves all of its rights and remedies in connection with the
14 foregoing.

15 Dated: January 30, 2018

ROBINS KAPLAN LLP

17 By: /s/ Scott F. Gautier

18 Scott F. Gautier
Kevin D. Meek

19 and

20 Randall L. Klein, Esq.
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23 **ATTORNEYS FOR COMVEST CAPITAL II,
24 L.P.**

PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Robins Kaplan LLP, 2049 Century Park East, Suite 3400, Los Angeles, California 90067

A true and correct copy of the foregoing documents entitled: **RESPONSE AND RESERVATION OF RIGHTS OF COMVEST CAPITAL II, L.P. TO THE DEBTOR'S EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS: (1) AUTHORIZING DEBTOR TO OBTAIN SHORT-TERM VENDOR FINANCING FROM NIKE USA, INC., SECURED BY SENIOR LIEN UNDER 11 U.S.C. § 364; (2) AUTHORIZING USE OF CASH COLLATERAL UNDER 11 U.S.C. § 363; (3) SCHEDULING FINAL HEARING ON MOTION; AND (4) GRANTING RELATED RELIEF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 30, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **January 30, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed. **NONE.**

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 30, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Courtesy Copy Via Messenger

Honorable Vincent Zurzolo
United States Bankruptcy Court
Central District of California
255 E. Temple Street, Suite 1360 / Courtroom 1368
Los Angeles, California 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 30, 2018
Date

Angela Matsuoka
Printed Name

/s/ Angela Matsuoka
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.